

The Administrative Law Judge awarded benefits for a 20 percent permanent partial disability to the shoulder. On appeal, claimant contends the ALJ erred by not awarding benefits for claimant's carpal tunnel syndrome as well as the shoulder. Respondent, on the other hand, argues the disability for the shoulder should be reduced because the Award relies on a rating not shown to be based on the *AMA Guides to the Evaluation of Permanent Impairment*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board agrees with and affirms the ALJ's conclusion that the carpal tunnel syndrome was related to claimant's diabetes and was not work related. And the Board finds that the record does not establish that Dr. Theodore L. Sandow, Jr.'s rating was based on the *AMA Guides*. The Board, therefore, concludes the award should be reduced to 10 percent, based on the rating by Dr. Nathan Shechter, a rating which is based on the *AMA Guides*.

Claimant injured his shoulder on May 5, 1996, while in the process of moving a spinner weighing approximately 120 pounds. A coworker dropped his end of the spinner and when claimant held on, the spinner pulled his arms down and forward. He felt immediate pain in his shoulder and within a few weeks felt numbness in his fingers. An EMG study done on July 26, 1996, revealed carpal tunnel syndrome on the right. No EMG was done on the left.

There is no dispute in this case that the accident on May 5, 1996, injured claimant's shoulder. The treating physician, Dr. E. Bruce Toby, diagnosed a torn rotator cuff and claimant underwent surgical repair on October 17, 1996. The dispute relates to the extent of disability for the shoulder and whether the carpal tunnel syndrome resulted from this accident or, instead, resulted from claimant's diabetes.

The Board first concludes, as did the ALJ, that the carpal tunnel syndrome was caused by claimant's diabetes and was not caused, aggravated, or accelerated by the accident of May 5, 1996. This conclusion is based primarily on the opinion of Dr. Toby. Dr. Toby did not consider the mechanism of the accident to be a likely cause of carpal tunnel syndrome. Dr. Toby's opinion is also supported, in part, on the fact the carpal tunnel was markedly severe, again unlikely to have been of recent origin. This conclusion is also supported by evidence relating to the duration and apparent severity of the diabetes. Claimant has had diabetes for over 20 years and has had to amputate a toe as a result.

As to the conclusion that the carpal tunnel syndrome is not work related, the Board agrees with and adopts as its own the findings and conclusions expressed by the ALJ in her Award.

The Board does, however, also agree with respondent's argument that the rating by Dr. Sandow, the rating the ALJ relied on to determine impairment to the shoulder, is not shown in the record to be based on the *AMA Guides* as required under K.S.A. 44-510e. The letter requesting Dr. Sandow's opinion may have requested an opinion based on the *Guides*, but the letter is not in evidence. Dr. Sandow may have intended, without stating, the opinion was based on the *Guides*. But the report from Dr. Sandow does not state that the opinion was based on the *Guides*, and Dr. Sandow was not deposed. The Board concludes claimant

has not established that the rating of Dr. Sandow was based on the *Guides* and the Board, therefore, cannot rely on that opinion.

Dr. Shechter and Dr. Toby both testified that their ratings were based on the AMA *Guides*. Dr. Shechter rated the shoulder only as a 10 percent impairment and Dr. Toby rated the shoulder impairment as 4 percent. The 4 percent rating for an operated rotator cuff tear appears, in the Board's opinion, to be inappropriately low and the Board therefore finds, based on Dr. Shechter's opinion, that claimant has a 10 percent impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample on March 11, 1999, should be, and the same is hereby, modified.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Layfette Weaver, and against the respondent, CertainTeed Corporation, and its insurance carrier, CIGNA Property & Casualty Company, for an accidental injury which occurred May 5, 1996, for 7.95 weeks of temporary total disability compensation at the rate of \$326 per week or \$2,591.70, followed by 21.71 weeks at the rate of \$326 per week or \$7,077.46 for a 10% permanent partial disability of the shoulder, making a total award of \$9,669.16, all of which is presently due and owing less amounts previously paid.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Alvin E. Witwer, Kansas City, KS
Mark E. Kolich, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge

LAYFETTE WEAVER

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DOCKET NO. 214,930

Philip S. Harness, Director